



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0503]

RIN 1625-AA00

Safety Zones; Captain of the Port Boston Fireworks display zones, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing six permanent safety zones throughout Boston Inner Harbor to be enforced during certain fireworks displays. These six permanent safety zones will expedite public notification of certain fireworks events and ensure the protection of the maritime public and event participants from the hazards associated with maritime fireworks displays.

DATES: This rule is effective on **[INSERT 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0503. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the

"SEARCH" Box and click "SEARCH." Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail [Mark.E.Cutter@uscg.mil](mailto:Mark.E.Cutter@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

On Thursday, September 26, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) in the Federal Register (78 FR 59313). No Public meetings were

requested or held. One formal written comment was received.

#### B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231, 1233; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Fireworks displays are held multiple times throughout the course of the year on U.S. navigable waters within Boston Inner Harbor. In the past, to ensure the protection of the maritime public and event participants from the hazards associated with these marine events, the Coast Guard has established a temporary safety zone around each display in response to a request from the fireworks display organizer. Establishing individual safety zones in this case-by-case manner has proved to be administratively cumbersome.

To relieve administrative overhead and better apprise the public on designated safety locations, this rule will establish safety zones that will remain in effect permanently but will be enforced when deemed necessary by the Captain of the Port (COTP). These permanent safety

zones will be published in Title 33 of the Code of Federal Regulations.

By establishing a permanent regulation containing these designated safety zones, the Coast Guard will eliminate the need to establish a temporary final rule for each fireworks display that occurs in Boston Harbor. This will alleviate the unnecessary administrative costs and burden associated with continually establishing temporary final rules for each event year after year. Moreover, the Coast Guard expects that placing these safety zones in the Code of Federal Regulations on a permanent basis will leave the public better informed about the location of and conditions associated with recurring maritime fireworks displays.

#### C. Discussion of Comments, Changes, and the Final Rule

For the reason discussed above, the Coast Guard is establishing six permanent safety zones in a new section of the Code of Federal Regulations, 33 CFR 165.119. Although these six safety zones will be in effect permanently, the associated regulations will only be enforced immediately before, during, and after a fireworks display. The Coast Guard anticipates that these safety zones will be enforced between the hours of 6:00 p.m. (e.s.t) and 1:00 a.m. (e.s.t), but the exact dates and times of enforcement will

be published in the Federal Register via a Notice of Enforcement. The Coast Guard will also provide notice of enforcement through Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNTM) prior to each event.

These six safety zones are the Charlestown Safety Zone, the Long Wharf Safety Zone, the Fan Pier Safety Zone, the Pier 6 Safety Zone, the North Jetty Safety Zone, and the Castle Island Safety Zone. The exact coordinates and sizes of each safety zone are listed below. The Coast Guard expects that during an enforcement period a safety zone will have a barge within the zone with a "FIREWORKS-STAY AWAY" sign on its port and starboard sides.

No vessels, except for fireworks barge and accompanying vessels, will be allowed to enter into, transit through, or anchor within a safety zone during an enforcement period without the permission of the COTP or the designated on-scene representative.

The one written comment received in the docket strongly supported the establishment of these Safety Zones. However, the comment contained two recommendations. First, the commenter recommended that the Coast Guard automatically enforce a safety zone anytime a fireworks display is going on within said safety zone rather than enforcing each zone only after requested to do so by a

fireworks organizer. The commenter is correct that the NPRM states that the Coast Guard will enforce these safety zones "only upon request of a fireworks display organizer." The Coast Guard maintains continual awareness of planned fireworks displays while exercising its authority under 33 CFR Part 100 and in keeping with that authority, fireworks display organizers are required to submit to the Coast Guard a marine event application. As a result, the COTP becomes aware of a planned event and then has the option to enforce a safety zone for that fireworks display.

Although the Coast Guard expects to enforce these safety zones only after receiving a request, the Coast Guard may enforce them anytime that the COTP determines that it is necessary for the purposes of safety. This rule does not abrogate the COTP's discretion to enforce a safety zone. Thus, if a fireworks display were planned within one of these safety zones but no request for enforcement was submitted to the Coast Guard, the Coast Guard could still enforce the zone.

The second recommendation from the commenter pertained to fireworks displays that might take place outside of one of these enumerated zones. Specifically, the commenter recommended that the Coast Guard ensure that fireworks displays happen only within these enumerated zones. The

commenter suggests that requiring fireworks displays to take place only in an enumerated zone would decrease safety risks and further cut down on administrative burdens. Once more, this rule does not abrogate the COTP's discretion to take action that he or she deems necessary in the interest of safety. Thus, if a fireworks display were planned outside of one of these enumerated safety zones, the Coast Guard has the authority to establish and enforce a safety zone around that location. That said, based on the history of fireworks events in Boston Harbor, the Coast Guard anticipates that most, if not all, fireworks events will take place within one of these enumerated zones. That is exactly why these enumerated zones are being established permanently in the Code of Federal Regulations.

With all of the above in mind, the Coast Guard made no change to this rule in response to the received comment.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. This regulation may have some impact on the public, but that potential impact will likely be minimal for several reasons. First, although these safety zones will be in effect permanently, each will be enforced only during a fireworks display. Based on past history, fireworks displays usually require enforcement for no more than two hours during the evening. Second, it is likely that the Coast Guard will enforce only one zone at a time. The Coast Guard does not expect to concurrently enforce more than one safety zones at any one time. Third, vessels may enter or pass through a safety zone during an enforcement period with the permission of the COTP or the designated representative. Finally, the Coast Guard will provide advance notification to the public anytime it intends to enforce one of these safety zones. Notification will be made through a Notice of Enforcement published in the Federal Register and also through the local Notice to



Mariners, Broadcast Notice to Mariners well in advance of the event.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. For the reasons discussed in the REGULATORY PLANNING AND REVIEW section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION

CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "Significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of

Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones, and thus, this action is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.119 to read as follows:

§ 165.119 Safety Zone; Captain of the Port Boston Fireworks display zones, Boston Harbor, Boston, MA.

(a) *Boston Inner Harbor*. The following areas are designated as safety zones:

(1) *Charlestown Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°22'12.7" N 071°02'53" W (NAD 1983), located off of Pier 5 Charlestown Navy Yard.

(2) *Long Wharf Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'41.2" N 071°02'36.5" W (NAD 1983), located off of Long Wharf, Boston MA.

(3) *Fan Pier Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'23.2" N 071°02'26" W (NAD 1983), located off of the Fan Pier, South Boston, MA.

(4) *Pier 6 Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'11.9" N

071°02'1.3" W (NAD 1983), located off of Pier 6, South Boston, MA.

(5) *North Jetty Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°21'01" N 071°01'31.7" W (NAD 1983), located off of the North Jetty, South Boston, MA.

(6) *Castle Island Safety Zone*. All U.S. navigable waters of Boston inner Harbor within a 700-foot radius of the fireworks barge in approximate position 42°20'27.4" N 071°00'28.1" W (NAD 1983), located off of the Castle Island, South Boston, MA.

(b) *Notification*. Coast Guard Sector Boston will use all appropriate means to notify the public in advance of an event of the enforcement of these safety zones to include publishing a Notice of Enforcement in the Federal Register and through the local Notice to Mariners and Broadcast Notice to Mariners. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS-STAY AWAY". This sign will consist of a ten inch high by one and half inch wide red lettering on a white background.

(c) *Enforcement period*. The Coast Guard anticipates that these safety zones will be enforced between 6:00 p.m.

(e.s.t.) and 1:00 a.m. (e.s.t.). The exact dates and times will be published as described in paragraph (b) of this section.

(d) *Definitions.* For purposes of this section "Designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Boston (COTP) to act on the COTP's behalf. The designated representative may be on an Official Patrol Vessel; Official Patrol Vessel may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP or the designated representative may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(e) No vessels, except for fireworks barges and accompanying vessels, will be allowed to enter into, transit through, or anchor within one of the aforementioned safety zones during an enforcement period without the permission of the COTP or the designated representative.

(f) All persons and vessels permitted to enter one of these safety zones during an enforcement period shall comply with the instructions of the COTP or the designated on-scene



representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(g) Vessel operators desiring to enter or operate within a safety zone during a period of enforcement shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center) to obtain permission.

Dated: April 21, 2014.

J. C. O'Connor III,  
Captain, U.S. Coast Guard,  
Captain of the Port Boston.

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